

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company
Proposing a Market Structure and Rules for the
Northern California Natural Gas Industry for the
Period Beginning January 1, 2003 as Required by
Commission Decision 01-09-016. (U 39 G)

Application 01-10-011
(Filed October 8, 2001)

**SCOPING MEMO AND RULING OF THE
ASSIGNED COMMISSIONER AND ADMINISTRATIVE LAW JUDGE**

Summary

Pacific Gas and Electric Company (PG&E) filed the above-captioned application on October 8, 2001 in response to Decision (D.) 01-09-016. D.01-09-016 granted PG&E's motion to withdraw its application (A.01-09-016) for the approval of open season procedures for awarding firm capacity on its gas transmission facilities for the period beginning January 1, 2003, the Gas Accord II period. D.01-09-016 directed PG&E not to re-file an application for an open season until it filed an application proposing a market structure and rules for the Gas Accord II period, and that the Gas Accord II application be filed no later than October 8, 2001.

PG&E's Gas Accord II application requests that the Commission authorize the extension of the existing Gas Accord market structure and rates for a two-year period in PG&E's service territory. The existing Gas Accord was approved by the Commission in D.97-08-055 (73 CPUC2d 754). The provisions of the Gas Accord expire on January 1, 2003, except for certain storage-related provisions which continue through March 31, 2003.

The Gas Accord provides for the operation of an open access intrastate gas transmission system in PG&E's service territory. Shippers and customers can purchase storage or intrastate transmission rights from PG&E, or they can purchase them from others in a secondary market transaction.

A prehearing conference (PHC) was held on January 7, 2002 to discuss the scope of issues covered by PG&E's application and a proposed schedule. The assigned Administrative Law Judge (ALJ) informed the parties at the PHC that a scoping memo would issue after the ALJ consulted with the assigned Commissioner's office. That consultation has taken place, and this scoping memo and ruling is the result.

Evidentiary hearings will be set for August 5 through August 14, 2002 to hear testimony on certain issues raised by various parties regarding the existing Gas Accord structure. The prepared testimony is to be served on the parties no later than July 15, 2002, and any reply testimony shall be served no later than July 29, 2002.

Background

Following the filing of PG&E's application, protests and responses to the application were filed. PG&E filed a reply and a supplemental reply. An ALJ ruling was issued on December 13, 2001 noticing the PHC. The ruling also directed the parties to file a PHC statement on whether PG&E's proposed resolution of the issues raised in the parties' protests and responses to the application was agreeable to them or not, and whether any hearings or briefs were needed before the Commission addressed whether the application should be granted or not. PHC statements were filed by some of the parties, and the PHC was held on January 7, 2002.

On April 6, 2001, PG&E filed a voluntary petition for relief under Chapter 11 of the United States Bankruptcy Code. PG&E subsequently filed an amended Plan of Reorganization with the Bankruptcy Court, which was objected to by the Commission. The Commission was allowed to file a term sheet with the Bankruptcy Court describing the principal terms of a proposed alternate plan of reorganization. On February 7, 2002, the Bankruptcy Court issued its “Memorandum Decision Regarding Preemption and Sovereign Immunity,” in which the court concluded “that there is no express preemption of nonbankruptcy law that permits a wholesale unconditional preemption of numerous state laws.” (Memorandum Decision, p. 3.) The Commission filed its term sheet with the Bankruptcy Court on February 13, 2002. PG&E’s response to the Commission’s term sheet was filed on February 21, 2002.

On November 30, 2001, PG&E filed an application with the FERC seeking a certificate of public convenience and necessity pursuant to Section 7(c) of the Natural Gas Act, 15. U.S.C. § 717f(c). That application seeks authorization for a new entity, GTrans, LLC (GTrans) to operate the gas transmission and storage system under FERC jurisdiction. PG&E requests that the FERC approve its Section 7 application by July 31, 2002.

Scope of Issues

The scope of issues raised in this proceeding were developed from PG&E’s application, the protests and responses to the application, PG&E’s reply pleadings to the protests and responses, the PHC statements, and statements made at the PHC. The various pleadings and statements set forth the arguments of the parties as to why the various issues should be addressed in this proceeding.

The ultimate issue raised by PG&E's application is whether the Gas Accord market structure and rates, as approved by the Commission in D.97-08-055 and modified by D.00-02-050 and D.00-05-049, should be extended for an additional two years. PG&E states in its application that if the Commission adopts the two-year extension of the Gas Accord structure, that it will waive the 2.5% escalation of certain rates called for in the Gas Accord Settlement.

Under PG&E's application, parties would be permitted to propose "specific, justified operational or other limited changes during the two-year extension period." However, PG&E proposes that any party seeking to obtain Commission approval of any changes to the Gas Accord structure must bear the burden of proof on such issues, and that the issues be addressed on a case-by-case basis in separate Commission proceedings which propose those specific changes, and not in this proceeding. (PG&E Application, pp. 6, 12.) PG&E also states that "in the event parties were to request rate or other changes to the Gas Accord regime in this proceeding, and the Commission were to agree to consider such requests, then PG&E must reserve its right to propose rates different from those in effect on December 31, 2002, for the period commencing January 1, 2003." (PG&E Application, p. 13.)

Several parties filed protests and responses to PG&E's application. Among the issues that parties raised is whether the existing contracts for backbone transmission and storage capacity, which have terms that run concurrently with the Gas Accord, should be extended for a two-year period, or whether they will expire as of January 1, 2003, and April 1, 2003, respectively. A related issue is whether an open season will occur if PG&E expands its gas transmission system capacity, or if an existing shipper decides to release any capacity that it holds.

In PG&E's reply to the protests and responses, PG&E clarified how it plans to address the issue of whether existing contract holders will have the opportunity to extend their contracts for the two-year extension period. PG&E states that "under the Gas Accord II Application, all holders of contract rights as of December 31, 2002 (or in the case of storage services, as of March 31, 2003) will be given the opportunity to renew their contracts for the two-year extension period."¹ (PG&E Reply Comments, p. 6.)

PG&E also states that it is in the process of installing certain pipeline looping on Line 401, which forms part of the Redwood Path. This project will expand the capacity of Line 401 by approximately 200 million cubic feet per day (MMcfd). Before the in-service date of this additional capacity, PG&E states that it will provide shippers with an opportunity to subscribe for this incremental capacity.

The following is a list of the other issues that parties believe remain outstanding and need to be resolved before deciding whether PG&E's application to extend the Gas Accord should be adopted or not. The list of outstanding issues was developed from comparing the various pleadings that have been filed in this proceeding, and providing parties with the opportunity to comment on any outstanding issues in their PHC statements and at the PHC. The list of perceived outstanding issues are as follows:²

¹ PG&E states that its certificate application before the FERC also proposes "continuation of all existing Gas Accord tariffs and contract rights for a similar transition period."

² See PHC R.T. pp. 2-15.

- Should there be restrictions on the amount of capacity that can be requested by any one bidder during the open season bids for relinquished and expansion capacity?
- Will there be separate open seasons for relinquished capacity and for expansion capacity?
- How will the extension of contracts, and new contracts for relinquished or expansion capacity match up with PG&E's proposed open season for GTrans' capacity?
- Will relinquished storage capacity be made available through an open season?
- If an open season is held, should the amount of reserve capacity be adjusted to reflect potential core growth?
- Should the issue of segmenting PG&E's electric generation rates be addressed before deciding whether the Gas Accord should be extended?
- Should the throughput figures used for calculating the electric generation rates be revised for the Gas Accord II extension period?
- Should there be a commitment by PG&E that by the end of 2002 it will commence selling its gas gathering facilities?
- Should PG&E be required to file one or more applications to divest its natural gas gathering assets, or an application to auction its remaining assets, by December 31, 2002?
- Should there be a commitment by PG&E that there will be no further reductions in facilities designated as gathering without first understanding why there have been reductions?

- Should the unbundling of backbone and local transmission charges be addressed in hearings, or should PG&E be prohibited from imposing local transmission rates on any customer directly connected to PG&E's backbone system who is not receiving local transmission service?

- Should PG&E's gas tariff regarding the withdrawal and delivery of gas at a zero rate be changed to apply to all independent gas storage facilities as well as PG&E's facilities, and whether the tariff should be changed to reconcile the zero rate with the manner in which as-available capacity is allocated?
- Should the issue of whether PG&E has sufficient backbone capacity to accommodate the Wild Goose Expansion Project be considered in this proceeding?
- Should hearings be held to review how the Gas Accord structure has performed, and whether it is in the best interest of the state to continue this kind of structure?

The remaining issues pertain to how this proceeding should be processed, which we discuss in the next section. These issues are:

- Should there be hearings on the unresolved issues, or should the Commission proceed directly to deciding whether the Gas Accord should be extended?
- Can some of these unresolved issues, such as a proposal for marketing any existing or incremental capacity be addressed by way of an advice letter?
- Possible resolution of the unresolved issues?

How the Issues Should be Resolved

PG&E's application requests that the existing Gas Accord be extended for an additional two years on essentially the same terms and conditions. The parties who raised the issues identified above believe that their issues should be resolved before the Commission decides whether the Gas Accord should be extended or not.

In order to resolve how these outstanding issues should be addressed, we need to consider whether the changes in the energy markets since the adoption

of the Gas Accord merit a review of whether any adjustments to the Gas Accord are needed now, and whether the issues raise factual or policy questions which need to be addressed.

The energy markets in California have been subjected to dramatic and unprecedented events during the past two years. The prices for electricity and natural gas have undergone tremendous price volatility, which has led to the procurement of electricity by the California Department of Water Resources and the Chapter 11 bankruptcy filing of PG&E. The shortage of electricity also created the need to build new electricity generating plants, many of which require natural gas service. Extending the Gas Accord, and allowing existing contract holders for backbone transmission and storage capacity to extend their contracts for an additional two years, could impact those end-users who need gas but do not have existing contracts which could be automatically extended if the contract holder desires to do so.

Another consideration to keep in mind is that the Gas Accord expires at the end of 2002, only 11 months away. That means the Commission must expeditiously address the ultimate issue raised by PG&E's application, and other issues, before the end of 2002 or let the present Gas Accord lapse without any replacement structure.³ In the alternative, the Commission could issue a decision

³ PG&E states in footnote 5 at page 6 of its application that it "believes that in the absence of action by the Commission or other authorized tribunal changing the market structure, rules and/or rates for the Northern California gas industry, the *status quo*, which is embodied in the current Gas Accord regime, would simply continue into the post-2002 period without change." There is no need to address that contention, and today's ruling refrains from doing so.

extending the Gas Accord for a shorter period of time than the two years requested by PG&E.

Some of the issues that parties have raised are issues which probably can be resolved without hearings since they are more procedural or mechanical in nature. These types of issues include: the amount of capacity that can be requested during the open season; whether there will be separate open seasons for relinquished and expansion capacity; how will the extension of contracts, and new contracts, match up with PG&E's proposed open season for GTrans' capacity; and if an open season is held, should the amount of reserve capacity be adjusted to reflect potential core growth. These types of issues can be addressed in hearings or in advice letters, as determined during the course of this proceeding.

The gas gathering issues were addressed in the Gas Accord. PG&E agreed to follow certain principles with respect to gas production in PG&E's service territory. Although the gas producers would like to see further commitments on PG&E's part, the gas gathering issues do not affect the underlying structure of the Gas Accord, and a decision on the extension of the Gas Accord could proceed in the absence of a resolution of these issues. Thus, we will not address further gas gathering issues in this proceeding.

Some of the parties have raised other issues which could change the existing Gas Accord structure by shifting costs. These issues include the following: how has the existing Gas Accord structure performed, and whether is it in the best interest of the state to continue this structure; should PG&E's electric generation rates be segmented; should the throughput figures used for calculating the electric generation rates be revised for the Gas Accord II period; and whether backbone and local transmission charges should be unbundled, or

should PG&E be prevented from imposing local transmission rates on any customer who is directly connected to PG&E's backbone system who is not receiving local transmission service.

The issues regarding whether the withdrawal and delivery of gas at a zero rate should apply to all independent gas storage facilities, and whether PG&E will have sufficient backbone capacity to accommodate the Wild Goose Storage, Inc. (Wild Goose) expansion Project, have been raised by Lodi Gas Storage and Wild Goose in the application of Wild Goose in A.01-06-029. However, some of these issues are more appropriately handled in this proceeding.⁴ We will leave determination of whether PG&E has sufficient backbone capacity to accommodate the Wild Goose expansion project to A.01-06-029 because it is specific to the Wild Goose situation. Application of a zero rate to all independent storage facility withdrawals and deliveries, however, as well as other issues with general applicability to independent storage, may be addressed in this proceeding.

PG&E proposes that the Gas Accord be extended without evidentiary hearings, and that parties be allowed to propose "specific, justified operational or other limited changes during the two-year extension period." (Application, p. 6.)

⁴ For example, the scoping memo and ruling issued in A.01-06-029 stated that if the Commission determined in A.01-06-029 that "PG&E does not have sufficient capacity on the backbone system to accommodate" the Wild Goose expansion project, a Phase III hearing would be held in A.01-06-029. However, the scoping memo and ruling also stated that "Phase III may be unnecessary if the PG&E Gas Accord II or another broader proceeding is filed and addresses these kinds of issues." The scoping memo and ruling also stated that the "broader issues" raised in A.01-06-029, such as whether the Gas Storage Rules should be amended, and the "priorities for the allocation of service on the backbone system," should be addressed in "a future proceeding which sets policy on an industry-wide basis or specifically for PG&E, such as the PG&E Gas Accord II."

However, some of these issues that parties have raised go to the heart of whether continuation of the existing terms and conditions of the Gas Accord for another two years is in the best interests of all customers. Thus, the issues, as described above, should be the subject of evidentiary hearings before deciding whether the Gas Accord should be extended or not.

Accordingly, we will set evidentiary hearings for August 5 through August 14, 2002 to address all of the other issues that parties have raised. Any party planning to address these issues shall electronically serve and mail their prepared testimony on the service list to this proceeding on or before July 15, 2002. Any party responding to the prepared testimony shall electronically serve and mail their reply testimony on or before July 30, 2002. Depending upon the evidence presented at the hearings, the terms and conditions of the Gas Accord could change.

We believe that this hearing schedule will provide the parties with the opportunity to address their issues of concern, while conserving the resources of the Commission and the parties while PG&E's Bankruptcy petition is still pending. This is consistent with the approach that the Commission announced in D.01-09-016 that parties "participate in this proceeding with all due deliberate speed and focus, yet not at the expense of acquiring, reviewing, and examining the data that will enable the Commission to structure the gas market, including an open season, in Gas Accord II." (D.01-09-016, p. 4.) Scheduling the hearings for August will also provide PG&E and other interested parties with the opportunity to possibly resolve some of their differences over the issues that we have identified in this ruling before the start of the hearings.

Rule 6(a)(3) of the Commission's Rules of Practice and Procedure provides in part that the assigned Commissioner shall rule on the category of the

proceeding. PG&E proposed that this proceeding be categorized as quasi-legislative. In Resolution ALJ 176-3076, which was ratified by the Commission on November 29, 2001, this proceeding was preliminarily categorized as ratesetting. This scoping memo and ruling confirms the categorization of this proceeding as ratesetting. Anyone who disagrees with this categorization must file an appeal of the categorization no later than 10 days after the date of this ruling. (See Rule 6.4.)

As a ratesetting proceeding, ex parte communications are permitted only if they are consistent with the restrictions set forth in Rule 7(c), and are subject to the reporting requirements set forth in Rule 7.1.

ALJ Wong is designated the principal hearing officer for this proceeding.

Schedule

The following is the schedule that will be followed in this proceeding:

Prepared testimony served electronically and by mail on the parties to this proceeding.	July 15, 2002
Reply testimony served.	July 29, 2002
Evidentiary hearings in Commission Courtroom, State Office Building, 505 Van Ness Avenue, San Francisco.	August 5 (9:30 a.m.) through August 14, 2002.
Briefing schedule.	To be decided.
Proposed decision.	To be decided.

IT IS RULED that:

1. Administrative Law Judge John S. Wong is designated the principal hearing officer for this proceeding.
2. The issues to be determined in this proceeding are as listed and discussed in the body of this ruling.

3. The schedule for this proceeding shall be as listed above, and the evidentiary hearings will commence on August 5, 2002, at 9:30 a.m., in the Commission's Courtroom, State Office Building, 505 Van Ness Avenue, San Francisco, and continue through August 14, 2002.

Dated February 26, 2002, at San Francisco, California.

/s/ RICHARD A. BILAS

Richard A. Bilas
Assigned Commissioner

/s/ JOHN S. WONG

John S. Wong
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Scoping Memo and Ruling of the Assigned Commissioner and Administrative Law Judge on all parties of record in this proceeding or their attorneys of record.

Dated February 26, 2002, at San Francisco, California.

/s/ FANNIE SID

Fannie Sid

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074 or TTY# 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.